

Appl. No. : 10/6,327  
Filed : August 1, 2003

### **REMARKS**

Applicants respectfully submit that the amendments add no new matter and are fully supported by the application as originally filed.

#### **Amendments to the Claims and Specification**

Claims have been amended.

Applicants respectfully submit that the amendments add no new matter and are fully supported by the application as originally filed.

#### **Newly Added**

No new claims have been added.

#### **Abstract Objections**

The applicants acknowledge the Examiners objections to the abstract. The corrected abstract is presented on page 6.

#### **Rejections under 35 U.S.C. §112**

The Examiner has rejected Claims 1-31 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Claims 1, 3, 5, 7, 9-13, 18, 21, 24, and 27-31 have been amended according to the Examiner's suggestion to replace "%" with "% by weight." Claims 2, 4, 6, and 8 have been amended according to the Examiner's suggestion to replace "GRAS" with "Generally Recognized as Safe (GRAS)."

Accordingly, the rejection of the claims for alleged indefiniteness should be reconsidered and withdrawn.

#### **Rejections under 35 U.S.C. §102(b)**

The Examiner has rejected Claims 1-12 and 31 under 35 U.S.C. §102(b) as being anticipated by Barby et al. (U.S. Pat. 4,448,704).

The Examiner maintains that Barby anticipates Claims 1-12 and 31 since "greater than 0.05%" could mean "0.05 wt% of an aqueous 1.0% wt% sodium hydroxide or potassium

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hydroxide". The applicant has amended Claims 1, 9, and 31 according to the Examiner's suggestion to read "greater than 0.05% by weight sodium hydroxide of potassium hydroxide". This precludes the meaning suggested by the Examiner of "0.05 wt% of an aqueous 1.0% wt% sodium hydroxide or potassium hydroxide" since 0.05wt% of a 1.0wt% solution is only 0.0005wt%. Therefore, Barby does not anticipate amended Claims 1, 9, and 31 and Claims 2-12, which depend upon Claim 1 or Claim 9.

Accordingly, the rejection of Claims 1-12 and 31 under 35 U.S.C. §102(b) as being anticipated by Barby et al. (U.S. Pat. 4,448,704) should be reconsidered and withdrawn.

The Examiner has rejected Claims 1-13, 18, 21, 24, and 31 under 35 U.S.C. §102(b) as being anticipated by Magyar (U.S. Pat. 4,613,446).

The Examiner notes that the compositions of Magyar have a pH of about 7.5 to 8.5 (Magyar col. 3, line 25). Applicant notes that Magyar repeats this limitation:

"Since the detergent composition has a pH of about 7.5 to 8.5, i.e. about neutral, it is not corrosive and does not injure the user's hands." (col. 5, lines 64-66 of Magyar) "Because of its substantially neutral pH (8.0), this composition is effective yet safe." (col. 6, lines 39-41 of Magyar) See also claims 1, 11, and 12 of Magyar.

The applicant notes that Claim 13 has the limitation "having a pH greater than about 10". Claim 18, 21, and 24 are dependent claims that incorporate the limitations of Claim 13. Since "a pH of about 7.5 to 8.5" does not teach "a pH greater than about 10", Magyar does not anticipate all the limitations of Claims 13, 18, 21, and 24. Claims 1, 9 and 31 have been amended to include the limitation "having a pH greater than 10". Therefore, Magyar does not anticipate all the limitations of amended Claims 1-12 and 31.

Accordingly, the rejection of Claims 1-13, 18, 21, 24, and 31 under 35 U.S.C. §102(b) as being anticipated by Magyar (U.S. Pat. 4,613,446) should be reconsidered and withdrawn.

#### **Rejections under 35 U.S.C. §103(a)**

The Examiner has rejected Claims 1-14, 16-19, 21-22, 24-25 and 27-31 under 35 U.S.C. §103(a) as being unpatentable over Barnabas (U.S. 2003/0119705) as applied to the above claims. The applicant notes that the Examiner has withdrawn rejections to Claims 1-13, 16, 18, 21,

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24, 27-31 under 35 U.S.C. §102(e) as anticipated by Barnabas because Barnabas in the cited examples include solvents.

Barnabas does not anticipate amended Claims 1, 9, 13, and 31 because the examples in Barnabas contain 8% solvent (as determined by the Examiner in the discussion of withdrawal of the 35 U.S.C. §102(e) rejection). Barnabas teaches that effective wipes have solvent to "provide improved filming and streaking benefits." [0132] Barnabas teaches that "Solvents are also beneficial because of their surface tension reduction properties help the cleaning profile of the compositions". [0132] **Barnabas does not teach or suggest that low levels of solvent and high levels of pH and hydroxide will provide disinfectancy or sanitization.**

In fact, Barnabas teaches that the antimicrobial PHMB and the antimicrobial citric acid are necessary to provide disinfectancy or sanitization. "The Applicant has found that the micro-effectiveness of PHMB is optimized at relatively low concentrations of organic acid. [0103] of Barnabas. "For hygiene claims in Europe, and sanitization, and 'Limited Disinfection' benefits in Canada and the United States, lower levels of polymeric biguanide, up to about 0.20%, are sufficient." [0105] of Barnabas.

Barnabas teaches only three compositions that have antimicrobial effectiveness. These compositions are acidic with high solvent levels. These compositions are given in the Table in paragraph [0224]. These compositions have 0.22% C12-14 sulfobetaine (a surfactant), 0.05% C12-14 EO21 (a nonionic surfactant), 0.25-0.75% citric acid, 2% propylene glycol n-butyl ether (a solvent having vapor pressure less than 0.1 mm Hg (20°C), 8% ethanol (a solvent), 0.1% perfume, and 0.3% PHMB (a quaternary ammonium antimicrobial agent) and having a pH about 3.5.

Barnabas teaches only 6 compositions having basic pH (Q, R, S, T, Z1, Z2 following paragraph [0200] containing 0.12 to 0.22% surfactant, 0.1% sodium hydroxide, 2% propylene glycol n-butyl ether, 8% ethanol, 0.1% perfume and having a pH about pH 11. These compositions contain 10% solvent and there is no indication that they might be effective to provide disinfectancy or sanitization. **There are no examples and no suggestion or expectation of success in Barnabas that low levels of solvent and high levels of pH and hydroxide will provide disinfectancy or sanitization.**

It is well settled law that in order to properly support an obviousness rejection under 35 U.S.C. § 103, there must have been some teaching in the prior art to suggest to one skilled in the

art that the claimed invention would have been obvious. W. L. Gore & Associates, Inc. v. Garlock Thomas, Inc., 721 F.2d 1540, 1551 (Fed. Cir. 1983). More significantly,

The consistent criteria for determination of obviousness is whether the prior art would have suggested to one of ordinary skill in the art that this [invention] should be carried out and would have a reasonable likelihood of success, viewed in light of the prior art. . . .Both the suggestion and expectation of success must be founded in the prior art, not in the applicant's disclosure . . . In determining whether such a suggestion can fairly be gleaned from the prior art, the full field of the invention must be considered; for the person of ordinary skill in the art is charged with knowledge of the entire body of technological literature, including that which might lead away from the claimed invention.

(emphasis added) In re Dow Chemical Company, 837 F.2d 469, 473 (Fed. Cir. 1988).

The Examiner has not shown why it would have been obvious to one of ordinary skill in the art to take the high solvent and low pH 3 compositions containing two antimicrobial agents (citric acid and PHMB) of Barnabas to arrive at a low solvent and high pH (greater than about 10) composition of the applicant's invention that achieves disinfectancy or sanitization without traditional antimicrobials, such as citric acid and PHMB. In fact, Barnabas does not suggest or provide the expectation of success that high pH and low solvent compositions are able to achieve disinfection or sanitization. Accordingly, the objection to Claims 1-14, 16-19, 21-22, 24-25 and 27-31 is overcome and it is respectfully urged that it be withdrawn.

The Examiner has rejected Claims 15, 20, 23 and 26 under 35 U.S.C. §103(a) as being unpatentable over Barnabas as applied to the above claims, and further in view of Barger et al. (U.S. Pat. 6,562,142). As stated above, Barnabas provides no suggestion or expectation of success for the limitations of amended Claim 13, upon which Claims 15, 20, 23, and 26 depend. Accordingly, the objection to Claims 15, 20, 23, and 26 is overcome and it is respectfully urged that it be withdrawn.

The Examiner has rejected Claims 14, 15, 19, 20, 22, 23, 25 and 26 under 35 U.S.C. §103(a) as being unpatentable over Magyar (U.S. Pat. 4,613,446) further in view of Barger. The applicant notes that Claims 14, 15, 19, 20, 22, 23, 25 and 26 are dependent upon Claim 13 and that the Examiner cites Magyar for anticipating the limitation "having a pH greater than about 10". For the same reason given above, Magyar does not anticipate, teach or suggest "having a pH greater than about 10" because Magyar is limited to and recommends lower pH compositions.

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Accordingly, the rejection of Claims 14, 15, 19, 20, 22, 23, 25 and 26 under 35 U.S.C. §103(a) as being unpatentable over Magyar (U.S. Pat. 4,613,446) further in view of Barger should be reconsidered and withdrawn.

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### CONCLUSIONS

In view of the foregoing amendments and remarks, Applicants submit that the application is in condition for allowance. If, however, some issue remains, which the Examiner feels may be addressed by Examiner's amendment, the Examiner is cordially invited to call the undersigned for a brief discussion.

Please charge any additional fees, including fees for additional extensions of time, or credit overpayment to Deposit Account No. 03 2270.

Respectfully submitted,  
The Clorox Company  
Customer No. 27019

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By: David Peterson

David Peterson  
Registration No. 37909  
Attorney of Record  
The Clorox Company  
1221 Broadway  
Oakland, CA 94612  
(510) 271-7521